

SUPPORT FOR THE AMENDMENTS

The present amendment cancels claims 1-16, and adds new claims 17-36.

Support for newly added claims 17 and 28 is found at specification page 5, lines 1-27, and page 6, lines 1-9, as well as original claims 1 and 9-12.

Support for newly added claims 18-23 is found at specification page 3, lines 6-27, and page 4, lines 1-4, as well as original claims 2-5.

Support for newly added claims 24-27 is found at specification page 4, lines 5-19, and page 6, lines 12-14, as well as original claims 6-8.

Support for newly added claims 29 and 30 is found at specification page 5, lines 12-19, and page 6, lines 15-19, as well as original claim 10.

Support for newly added claim 31 is found at specification page 5, lines 20-27, and page 6, lines 1-5, as well as original claim 11.

Support for newly added claim 32 is found at specification page 6, lines 6-9, as well as original claim 12.

Support for newly added claims 33 and 34 is found at specification page 3, lines 4 and 5, and page 9, lines 24-27, as well as original claims 13 and 14.

Support for newly added claim 35 is found at specification page 7, line 27, and page 8, lines 1-11, as well as original claims 1 and 15.

Support for newly added claim 36 is found at specification page 6, line 20, page 7, lines 1-26, as well as original claim 16.

It is believed that these amendments have not resulted in the introduction of new matter.

REMARKS

Claims 17-36 are currently pending in the present application. Claims 1-16 have been cancelled, and new claims 17-36 have been added, by the present amendment.

The rejection of now cancelled claim 15 under 35 U.S.C. § 102(b) as being anticipated over Ryoichi (abstract of JP 61-271205) is obviated by amendment, with respect to new claims 17-36, which incorporates the limitation of a branched fatty acid having a melting point of 80°C or less and/or a branched higher alcohol having a melting point of 80°C or less into claim 17.

New claim 17 recites a composition comprising a vesicle dispersion, wherein the vesicle dispersion comprises the following components: (A) a sucrose fatty acid ester; (B) a sphingosine or a derivative thereof; (C) an aqueous component; (D) a branched *fatty acid* having a melting point of 80°C or less and/or a branched *higher alcohol* having a melting point of 80°C or less; (E) an optional sterol; and (F) an optional drug.

Unlike the claimed invention, Ryoichi describes a cosmetic composition for the skin comprising: glycosylceramide and/or ceramide; and a glucose *ester* of a higher fatty acid or a sucrose *ester* of a higher fatty acid. Therefore, Ryoichi fails to disclose or suggest the claimed composition comprising a vesicle dispersion comprising a branched fatty acid having a melting point of 80°C or less and/or a branched higher alcohol having a melting point of 80°C or less. As a result, Ryoichi fails to anticipate or render obvious the presently claimed invention.

Assuming *arguendo* that sufficient motivation and guidance is considered to have been provided by Ryoichi to incorporate a branched fatty acid having a melting point of 80°C or less and/or a branched higher alcohol having a melting point of 80°C or less into the claimed vesicle dispersion, which is not the case, such a case of obviousness is rebutted by a showing of superior properties and secondary considerations.

As discussed in the present specification, the stability of conventional cosmetic compositions is adversely affected by sphingosine crystal deposition resulting from the highly crystalline nature of sphingosine derivatives, such as ceramide (See e.g., page 1, lines 10-18). Accordingly, there has been a long-felt need to provide a stable cosmetic composition that does not exhibit sphingosine crystal deposition (See e.g., page 2, lines 8-10). Based on the limited disclosure of Ryoichi, and the conventional cosmetic composition described therein, other skilled artisans have failed to discover a solution to this long-felt need.

As shown by the comparative experimental data presented in Table A of the 37 C.F.R. § 1.132 Declaration appended herewith, Applicants have discovered that superior properties with respect to suppressed sphingosine crystal deposition and improved stability are remarkably exhibited by incorporating the claimed vesicle dispersion comprising a *branched* fatty acid having a melting point of 80°C or less, such as isostearic acid, within the composition of Example 1, as compared the inferior properties exhibited by the conventional composition of Comparative Example 1, which comprises a *straight* chain fatty acid having a melting point of 80°C or less, such as stearic acid.

This evidence clearly demonstrates that a composition in accordance with the present invention comprising the claimed vesicle dispersion comprising a *branched* fatty acid having a melting point of 80°C or less remarkably exhibits superior properties with respect to suppressed sphingosine crystal deposition and improved stability, as compared to the inferior properties exhibited by conventional compositions comprising a *straight* chain fatty acid having a melting point of 80°C or less.

While wishing not to be bound to any particular theory, Applicants believe that among branched and straight chain fatty acids and higher alcohols having a melting point of 80°C or less, those having a branched chain exhibit enhanced mutual solubility with

sphingosine and derivatives thereof, such as ceramide, thereby resulting in suppression of sphingosine crystal deposition and improved stability of the composition (See e.g., page 7, lines 23-26).

Ryoichi fails to disclose or suggest utilizing a branched fatty acid having a melting point of 80°C or less and/or a branched higher alcohol having a melting point of 80°C or less to suppress sphingosine crystal deposition and improve stability of the composition.

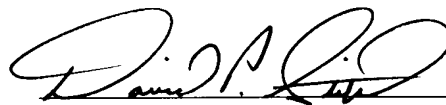
Withdrawal of this ground of rejection is respectfully requested.

The Examiner is respectfully reminded that upon a determination that the product claims drawn to the elected invention are found allowable, method claims drawn to the non-elected invention should be rejoined and examined for patentability, pursuant to MPEP § 821.04 and *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995).

In conclusion, Applicants submit that the present application is now in condition for allowance and notification to this effect is earnestly solicited.

Respectfully submitted,

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